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GARDEN RIVER FIRST NATION TRUST AGREEMENT

THIS AGREEMENT BETWEEN

GARDEN RIVER FIRST NATION BAND OF OJIBWAYS,

(hereinafter referred to as "GARDEN RIVER FIRST NATION")

OF THE FIRST PART;

- and -

CAROLINE BARRY, TERRY BELLEAU, WALLACE BELLEAU, BETTY GRAWBARGER, NOEL JONES, and CHRISTINE WHISKEYCHAN, and Chief of the Day, presently CHIEF DENNIS JONES, all of Garden River, in the Province of Ontario,

(hereinafter called the "Trustees")

OF THE SECOND PART;

- and -

ROYAL TRUST CORPORATION OF CANADA

(hereinafter called the "Corporate Trustee")

OF THE THIRD PART

WHEREAS **GARDEN RIVER FIRST NATION** has entered into a Phase I Specific Agreement between **GARDEN RIVER FIRST NATION**, Her Majesty the Queen in right of Ontario, and Her Majesty the Queen in right of Canada dated this 25th day of July, 1994, Phase II specific Agreement between **GARDEN RIVER FIRST NATION**, Her Majesty the Queen in right of Ontario, and Her Majesty the Queen in right of Canada dated this 25th day of July, 1994, Design and Construction Framework Agreement between **GARDEN RIVER FIRST NATION** and Her Majesty the Queen in right of Ontario, dated this 25th day

of July, 1994, and Highway Maintenance Service Agreement between **GARDEN RIVER FIRST NATION** and Her Majesty the Queen in right of Ontario dated this 25th day of July, 1994, (the "Agreements");

AND WHEREAS in the Agreements, Her Majesty the Queen in right of Ontario, agreed to pay to **GARDEN RIVER FIRST NATION** specified amounts of money which have been deposited, and will be deposited, to the Garden River First Nation Community Trust Account;

AND WHEREAS **GARDEN RIVER FIRST NATION** wants to ensure that the money in the Garden River First Nation Community Trust Account is managed, used and invested prudently and wisely, for the benefit of the present and future generations of the people of **GARDEN RIVER FIRST NATION** and has therefore created the Garden River First Nation Community Trust;

AND WHEREAS the purpose of this Trust Agreement is to set clear rules for the administration and operation of the Garden River First Nation Community Trust and to set rules for the appointment and conduct of the Trustees;

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. CREATION OF THE GARDEN RIVER FIRST NATION COMMUNITY TRUST
- 1.1 GARDEN RIVER FIRST NATION and the Trustees agree that Garden River First Nation Community Trust is established pursuant to the terms of this Trust Agreement. Each of GARDEN RIVER FIRST NATION and the Trustees acknowledges and agrees that the terms and provisions contained in this Trust Agreement are binding upon GARDEN RIVER FIRST NATION and the Trustees.
- 1.2 GARDEN RIVER FIRST NATION appointed the Trustees and the Trustees agreed to hold the Trust Property in trust for GARDEN RIVER FIRST NATION, upon the trusts set out in this Trust Agreement.
- 1.3 All beneficial right, title, interest and benefit in the Trust Property shall vest in GARDEN RIVER FIRST NATION.
- 1.4 All legal right, title, interest, and benefit in the Trust Property shall vest in the Trustees.
- 1.5 The Trust Property comprising the Garden River First Nation Community Trust shall, initially, be Ontario's Compensation which has been deposited by GARDEN RIVER FIRST NATION into the Garden River First Nation Community Trust Account.
- 1.6 This Trust Agreement came into effect and was settled on July 25, 1994 when each of the following had taken place:
 - (a) GARDEN RIVER FIRST NATION authorized the creation of this Trust on July 19, 1994;
 - (b) The Council of GARDEN RIVER FIRST NATION ("Council") by Council Resolution appointed the first Trustees on July 19, 1994;

(c) **GARDEN RIVER FIRST NATION** deposited Ontario's Compensation into the Trust Account on July 25, 1994 thereby settling the Trust.

2. **PURPOSE OF THE TRUST**

- 2.1 **GARDEN RIVER FIRST NATION** and the Trustees acknowledge and agree that the Trust Property is intended to be held and shall be held as a long-term asset for the use and benefit of **GARDEN RIVER FIRST NATION**, as Beneficiary, to be administered by the Trustees upon the trusts set out in this Trust Agreement.
- 2.2 **GARDEN RIVER FIRST NATION** and the Trustees wish to establish a Trust to be known as the Garden River First Nation Community Trust to hold the Trust Property for the use and benefit of **GARDEN RIVER FIRST NATION**.
- 2.3 **GARDEN RIVER FIRST NATION** and the Trustees agree that the Trustees will manage the Trust Property in a wise and prudent manner, and that the management of the Trust property may include acquiring land for **GARDEN RIVER FIRST NATION** both pursuant to the Agreements and otherwise, and investing and expending the Trust Property in ways that are to the greatest benefit to the people of **GARDEN RIVER FIRST NATION**, both those alive at the time this Trust Agreement is made and the future generations. The purposes for which the Trust Property may be used are more particularly set out in Articles 4, 7, 10 and 11 of this Trust Agreement.

3. CAPITAL AND REVENUE

- 3.1 The cash elements of the Trust Property shall be kept in two separate accounts. The money paid to **GARDEN RIVER FIRST NATION** by Ontario pursuant to the Agreements ("Ontario's Compensation") has and shall be paid into the "Trust Account" referred to in that Agreement, as directed by the Council. In this Trust Agreement, that account shall be called the "Capital Account", and the money in the account shall be called "Capital Moneys". The income derived from the Capital Account shall be called "Revenue Moneys", shall be placed in the "Revenue Account", and shall be accounted for by the Trustees separately and shall not be commingled with the Capital. The Capital Account and Revenue Moneys together, plus any property which is bought with the Capital Moneys or Revenue Moneys, and which remains the property of the Trustees, is the "Trust Property".
- 3.2 If property, shares or other investments are bought by the Trustees with Capital Moneys, this shall be called "Capital Investments". If property, shares or other investments are bought by the Trustees with Revenue Moneys, this shall be called "Revenue Investments".
- 3.3 **GARDEN RIVER FIRST NATION** can add other assets to the Capital Account or the Revenue Account from any source by Resolution of the Council. Any assets added to either of these accounts shall be governed by the terms of this Trust Agreement.

4. HOW THE TRUST PROPERTY CAN BE USED

- 4.1 The Trust Property, whether in cash or in any other form, shall not be used directly or indirectly for per capita distribution to Band members, except as specifically provided in subparagraphs 4.2(c) 4.3(i), 4.3(q) and 4.3(s).
- 4.2 The Capital Moneys shall be used only for:
- (a) acquiring land in accordance with the terms of this Trust Agreement, to be added to the **GARDEN RIVER FIRST NATION** Reserve, including by the Trustees transferring the land to Canada;
 - (b) investing in Authorized Investments as defined in Article 21;
 - (c) distributing up to One Thousand (\$1,000.00) Dollars to each Band Member within three (3) months of July 25, 1994, and only if the Trustees in their absolute discretion have established rules for the distribution to ensure that there is no discrimination between members on the basis of gender or residence, and that minors and persons under disabilities are properly protected and such distribution having taken place on October 11, 1994.
- 4.3 The Revenue Moneys shall be used only for:
- (a) acquiring land in accordance with the terms of this Trust Agreement, to be added to the Reserve;
 - (b) investing in Authorized Investments as defined in Article 21;
 - (c) acquiring land to be held for investment or development

- purposes, whether or not the land is to be added to the Reserve;
- (d) the building, establishment and operation of a school or schools;
 - (e) scholarship and bursary funds;
 - (f) construction and maintenance of roads, bridges, ditches, watercourses, fences, buildings or permanent improvements, works or infrastructure on the Reserve;
 - (g) the purchase of industrial or manufacturing equipment or machinery for **GARDEN RIVER FIRST NATION** or for a Band Corporation;
 - (h) to pay expenses necessarily incidental to the management of lands, buildings or businesses which are owned by **GARDEN RIVER FIRST NATION** or a Band Corporation;
 - (i) to establish and build a credit union or a bank owned by **GARDEN RIVER FIRST NATION** or a Band Corporation;
 - (j) to promote the health of the people of **GARDEN RIVER FIRST NATION** generally;
 - (k) to promote or establish a business or commercial operation owned by **GARDEN RIVER FIRST NATION** or a Band Corporation;
 - (l) to establish or enhance recreational facilities owned by **GARDEN RIVER FIRST NATION** or a Band Corporation;
 - (m) to preserve, study or promote Ojibway or **GARDEN RIVER FIRST NATION** language and cultural heritage;
 - (n) to lend money or other assets to **GARDEN RIVER FIRST**

- NATION**, Band Corporations or **GARDEN RIVER FIRST NATION** joint ventures, for any purpose listed above;
- (o) to fund the research, development or negotiation of claims by **GARDEN RIVER FIRST NATION** against Canada, Ontario, or both Canada and Ontario or any other entity;
 - (p) to hire people to work for **GARDEN RIVER FIRST NATION** or **GARDEN RIVER FIRST NATION** Band Corporations in the field of community development or resource development;
 - (q) to pay the reasonable expenses of the Trustees and the Trust in connection with the administration and operation of the Trust;
 - (r) beginning two (2) years after the date that this Trust Agreement comes into effect, to distribute to Band Members, without discrimination on the basis of gender or residence, up to two (2%) per cent of the revenue of the Trust Property which has accrued in any year. The percentage of the revenue of the Trust Property to be distributed hereunder may be increased from time to time by Council Resolution;
 - (s) the balance of any revenue of the Trust Property which has accrued in any year not used for purposes set out above will become payable in that particular year to **GARDEN RIVER FIRST NATION**;

4.4 The Trustees are authorized to purchase Authorized Investments as defined in Article 21 from the Capital Account and the Revenue Account, and to dispose of those Authorized

Investments as the Trustees in their absolute discretion consider appropriate from time to time.

- 4.5 No funds shall be withdrawn or expended from the Capital Account or Revenue Account except by means of a Trust Property Direction, as set out in Schedule "A" to this Agreement or such other method as agreed to by the Trustees from time to time.

5. AMENDING OR REVOKING THE TRUST

- 5.1 GARDEN RIVER FIRST NATION shall not revoke or amend this Trust except as provided in this Trust Agreement.

6. THE TRUSTEES

- 6.1 GARDEN RIVER FIRST NATION hereby appoints each of the Trustees who have signed this Agreement, to be a Trustee of the Garden River First Nation Community Trust, and to act as a Trustee according to the terms and conditions of this Trust Agreement. The Trustees shall have all the legal obligations of a Trustee, whether those obligations are part of the common law or are set out in any statute of Ontario regulating the conduct and obligations of Trustees.
- 6.2 The Trustees each accept the appointment as Trustee and the duties of a Trustee as set out in this Trust Agreement. The Trustees agree to carry out their duties according to terms

and conditions of this Trust Agreement.

- 6.3 Any person who becomes a Trustee after the execution of this Trust Agreement, whether in substitution or replacement of a Trustee, shall, prior to taking office as a Trustee, agree to become a party to, and be bound by, the terms and conditions of this Trust Agreement.
- 6.4 A Trustees' Certificate executed in the form set out in Schedule "B" to this Trust Agreement shall be conclusive evidence for any person or corporation dealing with the Trustees and the Trustees named therein are the current Trustees of this Trust Agreement and the Garden River First Nation Community Trust, provided that such Trustees' Certificate is dated not more than forty-five (45) days prior to the date upon which the Trustees' Certificate is to be relied upon by such person or corporation.
- 6.5 There shall always be Seven (7) Garden River Trustees including the Chief of **GARDEN RIVER FIRST NATION** and a Corporate Trustee.
- 6.6 All of the Garden River Trustees shall be Band Members. At least four (4) of the Garden River Trustees shall reside on the Reserve. All Garden River Trustees must be over the age of thirty (30) at the time they become Trustees except for the Chief of **GARDEN RIVER FIRST NATION**.
- 6.7 All Garden River Trustees shall be appointed by the Council, by Resolution.
- 6.8 At least two (2) months before the terms of the Trustees

expire, the Council shall post a notice in the Garden River First Nation Administration Office and other places where Band Council regularly places notices inviting Band Members to seek nomination as Garden River Trustees.

- 6.9 The first Garden River Trustees shall establish rules for the election of future Garden River Trustees, which rules shall be considered by the Council and, if approved by the Council, shall be posted prior to the first election of Trustees at the same time as the notice pursuant to Paragraph 6.8 is posted prior to that election.
- 6.10 The Garden River Trustees shall be elected every three (3) years;
- 6.11 If a vacancy among the Garden River Trustees occurs, it shall be filled by the Council by Resolution as soon as reasonably possible, but in any event within thirty (30) days of the date that the vacancy occurs. A Garden River Trustee appointed in this manner shall serve out the term of the Garden River Trustee he or she replaced.
- 6.12 The term of the original Garden River Trustees began on July 25, 1994.
- 6.13 Each Garden River Trustee shall serve for a term of three (3) years, subject to the provisions of this Article.
- 6.14 A Garden River Trustee shall serve until:
- (a) his or her term expires;
 - (b) he or she resigns;
 - (c) he or she dies;

- (d) he or she is bankrupt, or charged with an indictable offence, fraud, or any offence involving the Trust Property or the exercise of his or her responsibilities as a Trustee;
- (e) he or she fails to attend three (3) consecutive meetings of the Trustees, of which meetings he or she has received notice, and the other six (6) Trustees vote to remove him or her;
- (f) he or she fails to disclose a conflict of interest, or votes on any resolution in which he or she has a conflict of interest, contrary to Article 9 of this Agreement;
- (g) he or she is declared by a Court to be mentally incompetent;
- (h) he or she is a resident of the Reserve at the time he or she becomes a Trustee, and later ceases to reside on the Reserve, and the other six (6) Trustees vote to remove him or her for that reason provided that such Trustee shall be automatically removed in the event that less than four (4) Trustees fail to reside on the Reserve;
- (i) he or she is elected as a member of the Council except for the Chief of **GARDEN RIVER FIRST NATION** except for initial term.
- (j) notwithstanding the above, the Chief of **GARDEN RIVER FIRST NATION** shall be replaced by any new Chief at such time as the new Chief takes office;

6.15 Appointment of Corporate Trustee

The initial Corporate Trustee, and any succeeding Corporate Trustee, shall be a recognized financial institution licensed to do business in Canada and entitled by law to administer trusts, and shall be appointed by Council by a majority vote reflected in a Council Resolution.

6.16 Successor Corporate Trustee

The Corporate Trustee serves at the pleasure of Council and may be discharged upon thirty (30) days written notice given by the Council to the Corporate Trustee and to the Garden River Trustees. The Corporate Trustee may resign by giving thirty (30) days written notice to Council and to the Garden River Trustees. Any vacancy in the office of Corporate Trustee shall be filled in accordance with the terms of this Agreement by Council within fourteen (14) days of such vacancy, failing which the Garden River Trustees shall appoint a successor Corporate Trustee within thirty (30) days of such vacancy. On the termination of any Corporate Trustee, any indemnities in favour of that Corporate Trustee provided for in this Agreement shall continue.

6.17 Fee Payable to the Corporate Trustee

The Corporate Trustee shall be paid from the Revenue Account a reasonable fee, to be approved from time to time in advance by Council, for its services, but the fees of the Corporate Trustee are subject to renegotiation, in advance, if changes in practices, economic conditions, legislation, or

circumstances in general increase or decrease the expense, work or responsibility required to perform those services. The Corporate Trustee shall also, in addition to such fee, be entitled to be reimbursed from the Revenue Account for all costs reasonably incurred by it in order to vest title in a successor Corporate Trustee.

7. **AUTHORITY OF THE TRUSTEES**

7.1 The Garden River Trustees are authorized to:

- (a) retain, dismiss and replace lawyers, accountants, bookkeepers, investment advisors, realtors, appraisers, auctioneers, architects, engineers and other independent advisors or organizations qualified in the field for which their advice and opinions are sought, to assist the Trustees in carrying out their responsibilities and duties under this Trust Agreement, but the Trustees shall not be bound to act upon such advice, and shall not be responsible for any loss caused by so acting or not so acting, provided the decision to act or not act was reasonably taken;
- (b) establish the Capital Account and Revenue Account and make such arrangements governing banking procedures as they from time to time deem advisable, including, if they wish, the delegation of authority to sign cheques and withdraw moneys from the Capital Account or the Revenue

Account, to no fewer than three (3) of the Trustees for the purposes permitted by this Trust Agreement, provided that such delegation shall be in writing signed by all seven (7) Trustees voting on the delegation at a Trustee meeting;

- (c) engage a financial institution or corporation to carry out some or all of the directions set out in this Agreement;
- (d) make, and change from time to time, such rules as they deem appropriate and reasonable to govern their procedures, provided that such rules shall not be inconsistent with this Trust Agreement or any laws which govern Trustees generally;
- (e) institute, prosecute, settle and defend any lawsuits or other proceedings affecting them as Trustees, or the Trust Property, or any part of it, and make application to any Court of competent jurisdiction in respect of this Trust Agreement;
- (f) pay reasonable salaries, wages, fees and costs for the services of the persons or organizations referred to in subparagraph (a) above, including any amounts associated with the research, preparation, negotiation, settlement and implementation of this Trust Agreement and all documentation related thereto;
- (g) pay out of the Revenue Account reasonable compensation to Trustees for services provided under this Trust Agreement

but these payments shall always be subject to review by the Council or by a general meeting of Band Members or by a Court of competent jurisdiction, and the reimbursement to Trustees of expenses reasonably incurred by Trustees in carrying out the terms of this Trust Agreement;

- (h) employ such financial institution or corporation compensate such financial institution or corporation in such manner as the Trustees consider appropriate, if the Trustees in carrying out any direction consider it necessary in the exercise of an absolute discretion to engage a financial institution or corporation to carry out some or all of the directions set out in this Agreement;
- (i) maintain a written record of all decisions made by the Trustees and make these records available to the Council and to Band Members on request;
- (j) obtain fully audited annual reports on the state of the Trust Property and any transactions involving the Trust Property, and supply a certified copy of those reports to the Council within three (3) months of the fiscal year end.

7.2 Responsibilities of the Corporate Trustee

In addition to the other responsibilities set out in this Agreement, the Corporate Trustee shall have the exclusive responsibility for the following matters:

- (a) to keep a complete and accurate set of Minutes and

- accounting records for the Trust, including a record for each of the Capital Account and Revenue Account in sufficient detail to permit the fair market value of each account to be determined at any time;
- (b) to prepare and promptly provide copies to the Garden River Trustees and to Council timely investment and transaction statements for the Capital Account and Revenue Account on a monthly/quarterly/semi-annual/yearly basis in accordance with generally accepted trust accounting principles;
 - (c) to arrange for the custody of the Trust Property and to arrange that each asset of the Trust Property is registered in the name of the Trust or in the name of the Corporate Trustee on behalf of the Trust;
 - (d) to prepare and deliver such reports, returns, and documentation in respect of the Trust as are required from time to time by any applicable law or by any government agency having jurisdiction;
 - (e) to provide to the Garden River Trustees and Council, on a regular basis, timely periodic written or oral reports concerning the administration of the Trust.
 - (f) subject to any guidelines determined by the Trustees, to attend to the investment functions of the Trust in accordance with the terms of the Agreement, and to make any routine trading decisions and trades in the normal course of business.

8. MEETINGS OF THE TRUSTEES

8.1 The Trustees shall meet at least three (3) times each calendar year, and the conduct of all their meetings shall be governed by the following rules:

- (a) at least five (5) Trustees must be present for any decision made at the meeting to be valid, except that where a Trustee withdraws as a result of a conflict of interest, or where the vote is concerning the status of an absent Trustee, at least four (4) Trustees must be present;
- (b) decisions and actions of the Trustees present must be unanimous, except where this Agreement specifically provides otherwise. Where a Trustee at a meeting cannot vote because of a conflict of interest, it shall be sufficient if the remaining Trustees at the meeting vote in favour of the decision;
- (c) all meetings of the Trustees shall take place on the Reserve;
- (d) at the first meeting of the Trustees in any calendar year, the Trustees shall appoint one (1) Trustee to Chair the meetings for that year, such Chair shall be replaced if unable to act;
- (e) the Trustee appointed to chair the meetings in any year shall have the right to call such meeting of the Trustees in that year as he or she decides are necessary;

- (f) all Trustees shall be given fifteen (15) days' notice in writing of the place, date and time of every meeting, unless all Trustees agree to shorter notice;
 - (g) minutes of the meetings of the Trustees shall be kept in writing and shall be signed by each Trustee present at the meeting. The Trustees shall provide the Council with a copy of the minutes of each meeting of the Trustees.
- 8.2 If the Council calls a public meeting of Band Members concerning decisions to be made about the Trust, the Trust Property or its administration, the Trustees shall attend the public meeting and shall fully and fairly answer all questions that are asked of them.

9. **TRUSTEES' CONFLICT OF INTEREST**

- 9.1 A Trustee who is a party to a contract or proposed contract of the Trustees pursuant to this Trust Agreement, or who is a director, an officer or materially interested in, or has close connection to any person who is a party to a material contract of the Trustees pursuant to this Trust Agreement, shall disclose in writing to the Trustees the nature and extent of his or her interest or relationship.
- 9.2 The disclosure of interest described in paragraph 9.1 shall be made:
- (a) at the meeting at which a proposed contract is first considered by the Trustees;

- (b) if the Trustee was not interested in the proposed contract at the time of that meeting, then at the first meeting after he or she becomes so interested;
 - (c) if the Trustee becomes interested in a contract after it is made, then at the first meeting after he or she becomes so interested; and
 - (d) if a person who is interested in a contract is appointed as a Trustee after that contract is executed, then at the first meeting after he or she becomes a Trustee.
- 9.3 A Trustee who has a conflict of interest as described above shall not take part in any discussions, deliberations or votes of the Trustees concerning any such contract.
- 9.4 A contract is not void if a Trustee with an interest in the contract was present at the meeting for the purpose of securing a quorum, provided that the Trustee in question did not take part in discussions, deliberations or votes on the contract, and provided that the contract was approved by the other Trustees and was reasonable and fair to **GARDEN RIVER FIRST NATION** at the time it was approved.
- 9.5 Where one or more trustees have a conflict of interest and cannot vote or take part in discussions or deliberations on that contract, the contract may be entered into if all the remaining Trustees approve it. If such a contract has been approved, the Trustees with signing authority shall execute all necessary documents after the approval, whether or not such Trustees have a conflict of interest.

10. BUYING LAND

- 10.1 The Trustees shall take whatever steps are required of them by the Council to ensure that land acquired pursuant to this Trust Agreement is added to the Reserve. These steps may include selling or transferring the land to Her Majesty the Queen in right of Canada.
- 10.2 In buying any land, the Trustees are authorized to use money from the Capital or Revenue Account to pay the expenses and costs of buying the land, including paying any costs of surveys, legal fees, title searches, environmental reviews and all applicable taxes.
- 10.3 Within one (1) month after the Trustees buy any land, they shall provide the Council with copies of the signed Agreement to Purchase, and of all documents collected or prepared by the Trustees or their lawyers relating to the title to that land and the condition of the land.
- 10.4 The Trustees may bring to the attention of the Council any land in the **GARDEN RIVER FIRST NATION** area which is for sale.
- 10.5 The Trustees shall not bear the responsibility to buy any land if the Council has not given the Trustees direction by Resolution in writing to buy the land.

11. TRUST INCOME AND EXPENSES

- 11.1 All income from Trust Property shall be used firstly to pay

the trust's expenses which are deductible from any taxable income of the Trust. As **GARDEN RIVER FIRST NATION** and the Trustees wish to conduct their business so as to keep any taxes payable to a minimum, the Trustees may pay directly to **GARDEN RIVER FIRST NATION** any income from Trust Property which would otherwise be taxable.

- 11.2 The Trustees shall seek competent advice on the best ways to invest the Trust Property and to avoid paying tax on the income or any capital gains of the Trust Property, and shall take such steps consistent with the purposes of the Trust as they feel are reasonable to avoid taxation of such income.
- 11.3 The Trustees may pay money to **GARDEN RIVER FIRST NATION** to meet any of the purposes of the Trust set out in paragraphs 2, 4, 7, 10 and 11 of this Trust Agreement.
- 11.4 The Trustees, after seeking advice on the tax implications of doing so, may pay part of the income on Trust Property to **GARDEN RIVER FIRST NATION**, in addition to any amounts paid pursuant to paragraph 11.3, provided that **GARDEN RIVER FIRST NATION** immediately lends that money back to the Trust, either with or without interest as the Council and Trustees (with tax advice) may decide, and on such security as the Council may decide. Such loans shall be repaid by the Trust to **GARDEN RIVER FIRST NATION** within two (2) years of the date of the loan.

12. SPENDING TRUST PROPERTY FOR PURPOSES OTHER THAN BUYING LAND

12.1 All spending of Trust Property (except to buy land pursuant to paragraph 10 or to pay expenses or make loans pursuant to paragraph 11) must be consistent with paragraph 4 and must first meet the following requirements:

- (a) the project or proposal must be detailed in writing with a budget, and submitted to the Trustees;
- (b) the Trustees must have considered it and recommended it at a duly called meeting of the Trustees;
- (c) if the Trustees have recommended the project or proposal, they shall then call a Band Meeting on the reserve at a date and time of their choosing;
- (d) notice of the date, place and time of the Band Meeting shall be posted at the Administration Office and other places regularly posted on the Reserve and at such other places as the Trustees deem advisable, at least (30) days before the date set for the meeting;
- (e) the notice shall state that the purpose of the meeting will be to consider spending a specific amount of the Trust Property for the specified project or proposal. The notice shall provide details of the project or proposal and its budget. The notice shall include a statement of whether matching or additional funding is available for the project or proposal from other sources. The notice shall state that the Trustees have recommended that the project or proposal is worthy of consideration

by the people of **GARDEN RIVER FIRST NATION**;

- (f) for a project or proposal to be approved by **GARDEN RIVER FIRST NATION**, a Vote in which at least thirty-five (35%) per cent of the voters participate, and in which a majority of those who vote, vote in favour of the project or proposal, is required. The vote may take place at the Band Meeting but shall be conducted by secret ballot;
- (g) the ballot shall describe the project briefly, and set out the amount of the Trust Property it is proposed should be spent, and shall ask:

"Do you approve of this expense by the Trustees for this project" YES _____ NO _____".

12.2 If the people of **GARDEN RIVER FIRST NATION** approve the spending of the Trust Property as set out in paragraph 12.1, the Trustees shall spend up to, but not more than, the specified amount for that project.

12.3 More than one project or proposal may be considered at any meeting of the Trustees or at any Band Meeting.

13. INVESTMENT AUTHORITY OF THE TRUSTEES

13.1 In addition to the spending authority of the Trustees, the Trustees have and shall exercise the following investment powers, subject to the following restrictions:

- (a) they shall negotiate the interest rates and prices to the best of their abilities on Trust Property Money in

accordance with the investment objectives of the Trust (taking into account all effects of possible taxation as well);

- (b) Trust property money which is not needed for short-term spending may be invested in authorized investments;
- (c) the Trustees shall not mortgage, pledge, hypothecate or encumber the Trust Property or any interest therein for any purpose whatsoever during the time this Trust Agreement is in effect.

14. ACCOUNTABILITY OF TRUSTEES

- 14.1 The Trustees shall prepare a written annual report on the investment and activities of the Trust, and shall attach the annual audited statement to the annual report. A copy of the annual report and audit shall be sent to each dwelling on the Reserve and to each adult Band Member living off the Reserve at the address of that Band Member last known to the Council.
- 14.2 The Trustees shall meet and consult with the Council when requested by the Chief to do so.
- 14.3 The Trustees shall not be liable for any loss that may happen as a result of any investment made by the Trustees in good faith in Authorized Investments or in land for investment purposes.
- 14.4 The Trustees shall maintain proper records of all transactions affecting the Trust Property and shall cause to be prepared,

for each Fiscal Year, financial statements respecting the Trust Property prepared in accordance with Canadian generally accepted accounting principles, consistently applied. The Trustees shall have the financial statements audited by a qualified independent auditor, and the Trustees shall engage the appointed auditor to submit or file his or her report on the financial statements for the fiscal year to the Trustees and Council, within ninety (90) days of the end of each Fiscal year.

14.5 At the request of the Council, the Trustees shall provide the Council with a copy of all ledgers, registers and documents or recordings of transactions affecting or evidencing the Trust Property.

15. HOW LONG THE TRUST SHALL LAST

15.1 Because Canadian law contains a "rule against perpetuities", which limits how long a trust can last, this Trust, unless terminated sooner, shall terminate twenty (20) years after the death of the last surviving descendant of the Member of the **GARDEN RIVER FIRST NATION** who is alive at the time this Trust Agreement came into effect.

15.2 When the Trust Agreement is terminated the Trust Property shall be transferred to **GARDEN RIVER FIRST NATION**.

15.3 The Trust shall also be terminated if all the Trust Property has been expended or transferred to **GARDEN RIVER FIRST NATION**.

15.4 Within three (3) months after the termination of the Trust, the Trustees shall prepare a final report of the Trust's activities, purchases and financial dealings, and shall present that report to the Council, along with all the records, account books and other documents of the trust.

16. LIABILITY OF TRUSTEES

16.1 General Indemnification

It is understood and agreed that each and every Trustee of this Trust shall be deemed to have assumed his office (including successor Trustees) on the express understanding, agreement and condition that every Trustee of this Trust from time to time, and his/her heirs, executors, administrators and estate and effects respectively shall, from time to time, and at all times, be indemnified and saved harmless out of the funds of the Trust from and against all costs, charges and expenses whatsoever which are brought, commenced, or prosecuted against him/her for or in respect of, any act, deed, matter or thing whatsoever made, done or permitted by him/her in or about the execution of the duties of his/her office, and also from and against all other costs, charges and expenses which he/she sustains or incurs in or about or in relation to the affairs of the Trust, except such costs, charges or expenses as are occasioned by his/her own wilful gross neglect or gross default, and the Trustees shall not be liable for any

error in judgment.

16.2 Reliance upon Professionals

The Trustees may rely and act upon the accuracy of any statement or report prepared by the accountants or financial advisors for the Trust, or by the Corporate Trustee, or any report or opinion from any solicitor for the Trust, and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement, opinion or report.

16.3 Defence of Good Faith

No Trustee shall be liable for the acts, omissions, receipts, neglects or defaults of any other Trustee or person, firm or corporation employed or engaged by the Trust, or for joining in any receipt or act of conformity, or for any loss, damage or expense occasioned by the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be placed out or invested, or for any loss or damages arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on his/her part, or for any other loss, damage or misfortune which may happen in the execution of the duties of his/her respective office or trust, or in relation thereto, unless the same shall happen by or through his/her own wilful gross neglect or gross default, and he/she shall be entitled to rely upon the defence

of good faith.

16.4 Indemnification by Trustee

No Trustee shall be deemed to have indemnified any other Trustee or Trustees against any losses, costs, claims, charges or expenses brought against or sustained or incurred or suffered by any other Trustee who has guaranteed or is personally liable for any debt or any other obligation of the Trust, notwithstanding that such debt or obligation is incurred or assumed for the benefit of and in the operation of the Trust, unless such indemnification shall be in writing executed by that Trustee or those Trustees so indemnifying the Trustee or Trustees becoming liable as aforesaid in his/her or their personal capacity, the Trustees are authorized from time to time to give indemnities from the Trust to any Trustee who has undertaken or is about to undertake any liability on behalf of the Trust or any other person, firm or corporation in whom the Trust is interested and to secure such Trustee (or any other person undertaking any liability on behalf of the Trust) against loss by mortgage and charge upon the whole or any part of the real and personal property constituting the Trust, by way of security.

16.5 Limits of Indemnity

No Trustee shall be liable for the acts, omissions, receipts, neglects or defaults of any other Trustee or person, firm or corporation employed or engaged by the Trust, or for joining in any receipt or act of conformity, or for any loss, damage

or expense occasioned by the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be placed out or invested, or for any loss or damages arising from the bankruptcy, insolvency or tortious acts of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on his/her part, or for any other loss, damage or misfortune which may happen in the execution of the duties of his/her respective office or Trust, or in relation thereto, unless the same shall happen by or through his/her own wilful gross neglect or gross default .

16.6 Lien on Trustee Property

The Trustees jointly shall have a first and paramount lien charged on all of the assets from time to time comprising the Trust except Reserve Lands as security to them for the payment of all sums and monies which the Trust Fund is charged with paying to them pursuant to the indemnities and protection of their personal estates as provided in this Articles and elsewhere in this Trust Indenture. Such lien shall extend to cover and include the Capital of the Trust as well as the Income therefrom and the future Income of the Trust. For the purpose of enforcing such lien, and in the event that the cash, or income or capital of the Trust in the hands of the Trustees shall at any time, or from time to time, be

insufficient for the payment of monies properly due to the Trustees as in this Indenture provided, or as by the law provided, then, in each such event, and from time to time, the Trustees shall be entitled to sell all or such portion of the Trust Fund and the Capital of the Trust, except Reserve Lands as may be necessary to pay and discharge the monies so payable, and to utilize the proceeds of any such sale for such purpose.

16.7 Indemnity for Fines, Penalties, Damages, etc.

Should the Trustees, for any reason, fail to assess or report or pay any taxes that may be subject to assessment or payment during the currency of this Trust, and for which the Trustees might be responsible, the Trustees shall not be liable for any such failure; and in the event that the Trustees should be called upon to pay any such taxes or penalties, or other charges thereon, any such money so paid out by the said Trustees shall be returned to them out of the Income of the Trust, and if the Income has been expended by the Trustees before such payment or disbursement, then and in that event there shall be refunded to the Trustees out of the Capital of the Trust all such monies paid out and expended by them. This provision for indemnity and reimbursement shall also extend to and apply to any other fines, levies, assessments and damages levied against the Trustees, and to any matter or thing done or omitted to be done in connection with the management and operation and administration and carrying out of this Trust.

16.8 Not Liable for Debts

The Trustees shall not be personally liable for any monies to become due or for any claims against the Trust or for any investment executed by the Trustees under the provisions hereof, but the Trustees shall have the power to bind the Trust estate without rendering themselves personally liable. The legal title to all property belonging to the Trust shall be and remain vested in the Trustees and their successors until the termination of this Trust as provided by this indenture.

17. CHANGING THE TERMS OF THE TRUST

17.1 The terms of the Trust and of this Trust Agreement shall not be changed at all until after two (2) years have passed since the Trust Agreement shall have come into effect.

17.2 At any time after two (2) years have passed since the Trust Agreement shall have come into effect, the terms of the Trust or of this Trust Agreement may be changed. Such change shall be made if:

- (a) a majority of the voters of **GARDEN RIVER FIRST NATION** vote in favour of the change at a duly called Band Meeting. The Band Meeting and vote shall be conducted in the same way as meetings pursuant to Paragraph 12;
- (b) thirty (30) days advance written notice of the place, date and time of any Band Meeting to discuss or vote on

proposed changes to the terms of the Trust or Trust Agreement shall be posted at the Garden River First Nation Administration Office.

18. BANKING

18.1 All income from Trust Property shall be paid first into the Revenue Account before any of it can be spent by the Trustees pursuant to this Trust Agreement.

18.2 The Capital Account and the Revenue Account may, upon thirty (30) days written notice to the Financial Institution in which the Trust Account has been opened, be transferred to any bank or financial institution in Canada, provided that the Trustees and that bank or financial institution have entered into a written agreement consistent with the terms of this Trust Agreement.

19. NOTICE

19.1 Whenever in this Trust Agreement it is required that notice be given to any party, such notice shall be given in writing by delivering it personally or sending it by registered mail:

(a) to the Council at:

Site 5, Box 7
R.R. #5,
Garden River, ON P6A 5K9

(b) to the Trustees in care of the Council, which shall

ensure that notice is delivered to each Trustee at his or her last known mailing address.

20. INTERPRETATION

- 20.1 The headings in this trust Agreement are inserted only for convenience and shall not control or affect the meaning or interpretation of any part of this Trust Agreement;
- 20.2 In this Trust Agreement words in the singular include the plural and the words in the plural include the singular.
- 20.3 In this Trust Agreement words referring to male persons include female persons and corporations.
- 20.4 This Trust Agreement shall be construed under and regulated by the applicable laws of the Dominion of Canada and the Province of Ontario, and the parties agree that at all times the principal place of administration of the Trust created by this Trust Agreement shall be the Reserve.

21. DEFINITIONS

Any words in this Trust Agreement which are not specifically defined in this agreement and are defined in the Agreements shall have the same meaning as in the Agreements.

"Authorized Investments" means

- (a) Debt instruments issued or guaranteed by the Government of Canada, a Province of Canada, or a Municipality of Canada;

- (b) Debt instruments issued or guaranteed by any of the following chartered banks including bankers' acceptances:
 - (i) Chartered Banks
 - (ii) Trust Companies
 - (iii) Credit Unions
- (c) Investment Grade Commercial Paper issued by corporations rated R-1 or A-1 by the Dominion Bond Rating Service or Canadian Bond Rating Service up to \$0.5 Million per issuer;
- (d) Investment Grade Corporate Bonds rated A or better by the Dominion Bond Rating Service or the Canadian Bond Rating Service up to \$0.5 Million per issuer;
- (e) Mortgage backed securities which are guaranteed by federal or provincial government agencies or by any of the above chartered banks;
- (f) Mutual or pooled fund of the above listed authorized investments not to exceed fifteen (15%) per cent of the book value of the Capital Account;
- (g) Without being limited by subparagraphs (a) through (g) above, any investments which have been recommended by the Trustees and which have been approved by the Band Members in the same manner as projects or proposals are approved pursuant to paragraph 12.1;

"Band Corporation" means a company which has been incorporated pursuant to the laws of Canada or Ontario and which meets the following requirements:

- (a) the company's purposes include the holding of real property or chattels for the use and benefit of **GARDEN RIVER FIRST NATION**;
- (b) all the shares of the company that have been issued are owned by **GARDEN RIVER FIRST NATION** or by Band members in trust for **GARDEN RIVER FIRST NATION**, and
- (c) the operations and profits benefit all Band Members.

"**Band Member**" has the same meaning as "Member".

"**Council**" means the Council of **GARDEN RIVER FIRST NATION**.

"**Corporate Trustee**" means the trustee from time to time appointed by Council in accordance with paragraph 6.15.

"**Financial Institution**" means such institution as **GARDEN RIVER FIRST NATION** may from time to time appoint as its agent, including a Canadian chartered bank or a trust company incorporated by the law of Ontario or Canada.

"**Garden River Trustee**" means the trustees from time to time elected or appointed in accordance with paragraph 6.1.

"**Reserve**" means the Garden River First Nation Indian Reserve and any lands that are added to that reserve from time to time.

"Trustees" means the trustee or trustees from time to time acting under this Agreement and includes the Garden River Trustees and the Corporate Trustee.

"Vote" means a vote held in a manner consistent with the process set out in the Indian Act Referendum Regulations, but with the Council assuming all the powers of the Minister and any officials of the Department of Indian Affairs and Northern Development.

In witness whereof the Council, Trustees and Corporate Trustee have executed this Agreement at Garden River, in the Province of Ontario, on the 3rd day of August, 1995.

Chief Dennis Jones
Chief

Arnold Johnson
Councillor

Tyrone Saulters
Councillor

Caroline Barry
Councillor

Blaine Perry
Councillor

Jimmie Juviri
Councillor

Terry Belleau
Councillor

Councillor

Councillor

Councillor

Chief Dennis Jones
Trustee - Chief Dennis Jones

Caroline Barry
Trustee Caroline Barry

Terry Belleau
Trustee Terry Belleau

Wallace Belleau
Trustee Wallace Belleau

Betty Lou Grawbarger
Trustee Betty Grawbarger

Noel Jones
Trustee Noel Jones

Christine Whiskeychan
Trustee Christine Whiskeychan

Royal Trust Corporation of Canada

Per [Signature]

Per [Signature]

SCHEDULE "A"

Sample Trust Property Direction

To: (Name of Financial Institution)

Provided that attached to this Trust Property Direction is Trustees' Certificate dated not more than forty-five (45) days prior to the date hereof, you are authorized and directed to:

_____ Pay by way of bank draft drawn on the Capital Account

or

_____ Pay by way of bank draft drawn on the Revenue Account

or

_____ Pay by way of cash, certified cheque, money order or similar negotiable instrument, drawn on the Revenue Account

or

_____ Pay by way of cash, certified cheque, money order or similar negotiable instrument, drawn on the income of the Trust

to the following payee(s):

in the sum of \$ _____.

Dated at _____ this _____ day of _____, 190__.

Trustees of the Garden River First Nation Community Trust

Witness

Trustee

Witness

Trustee

Witness

Trustee

Witness :

Trustee

Witness

Trustee

Witness

Trustee

Witness

Trustee

